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No. 431

In the Supreme Court of the United States

OCTOBER TERM, 1946

ALFRED TESTA AND PHILIP B. FLEMING, TEMPORARY CONTROLS ADMINISTRATOR, PETITIONERS

v.

HARRY KATT

ON WRIT OF CERTIORARI TO THE SUPERIOR COURT OF THE STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS FOR PROVIDENCE AND BRISTOL COUNTIES

BRIEF FOR THE PETITIONERS

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OPINION BELOW

The Superior Court wrote no opinion. The opinion of the Supreme Court of Rhode Island (R. 36–38) is reported at 47 Atl. 2d 312.

JURISDICTION

The final judgment of the Superior Court of Rhode Island in favor of the defendant was entered August 16, 1946 (R. 40). The opinion of the Supreme Court of Rhode Island was rendered May 23, 1946 (R. 36–38). The petition for a writ of certiorari was filed on August 22, 1946, and was granted on October 28, 1946 (R. 42). The jurisdiction of

this Court rests upon Section 237 (b) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether a state court of general jurisdiction may refuse to entertain a consumer's action for damages in respect of an over-ceiling sale, brought under Section 205 (e) of the Emergency Price Control Act of 1942, as amended, on the ground that it is an action for a penalty based on the statute of a foreign sovereign.

CONSTITUTIONAL PROVISION, STATUTE, AND REGULATION INVOLVED

Article VI, Clause 2, of the Constitution of the United States, and the pertinent portions of the Emergency Price Control Act of 1942, as amended (56 Stat. 23, 58 Stat. 632, 50 U. S. C. App., Supp. V, 901 *et seq.*), are set forth in the Appendix, pp. 42–46, *infra*.

The Regulation involved is Maximum Price Regulation 540 (9 F. R. 6434); since its application in the ascertainment of the proper ceiling price was not disputed (R. 3–4) it is not more fully set out.

STATEMENT

On August 26, 1944, petitioner Alfred Testa commenced an action against respondent, Harry Katt, in the Sixth District Court of Rhode Island to recover statutory damages and counsel fees under Section 205 (e) of the Act. The *ad damnum* in the declaration was laid at $900.

The declaration in the District Court alleged, and the evidence later established without dispute, that on August 3, 1944, respondent sold to petitioner Testa a 1939 La Salle Club Coupe automobile equipped with radio and heater and received in payment therefor $1,100, which was $210 above the maximum price of $890 prescribed by the applicable OPA Regulation (R. 2–3, 36). To this declaration, respondent demurred upon several grounds which, in substance, asserted that the courts of Rhode Island had no jurisdiction of the action because it was not authorized by Rhode Island law, but rather by the laws of the United States, and was penal and not remedial in nature (R. 3–4).[1] This demurrer was overruled by the District Court and decision was thereupon entered in petitioner Testa's favor for $680 (R. 2).

Respondent appealed to the Superior Court where on January 17, 1945, the same demurrer was argued and again overruled (R. 34, 40). From this determination, respondent appealed to the Supreme Court of Rhode Island on a bill of exceptions which was dismissed by that Court as premature on April 2, 1945, and the case was remitted to the Superior Court for hearing on the merits (R. 40).

On May 31, 1945, the case went to trial before the

[1] There was one non-jurisdictional ground asserted in the last paragraph of the demurrer, viz., that the parties were in *pari delicto*. So far as the record shows, this ground played no part in the determination of the case by any Rhode Island court.

Superior Court and a jury (R. 4), where, at the close of the evidence, both parties moved for a directed verdict (R. 28). The respondent's motion raised the same question previously posed by the grounds urged for the demurrer, i. e., the jurisdiction of the Superior Court over the subject matter of the action (R. 28–29). The trial judge denied respondent's motion, granted that of petitioner Testa, and directed a verdict in the latter's favor for $360 (R. 30, 31).[2]

On August 3, 1945, Chester Bowles, then Price Administrator, was made a party intervenor by order of the Superior Court (R. 32–33).[3]

Again respondent appealed to the Supreme Court, this time on exceptions to the trial court's direction of a verdict as well as to the overruling of his demurrer (R. 34–35). On February 6, 1946, the exceptions were argued before the Supreme Court by all parties, including the then Price Administrator who, as intervenor, had filed a formal appearance in that Court. On May 23, 1946, the Supreme Court sustained respondent's exception to the overruling

[2] The trial judge allowed only the amount of the overcharge plus attorney's fees, denying treble damages because the violation was found not to be intentional (R. 29–30).

[3] Price Administrator Paul A. Porter was duly substituted as intervenor in the Rhode Island court (R. 39), and petitioner Philip B. Fleming, Temporary Controls Administrator, was substituted here after the merger of the Office of Price Administration in the Office of Temporary Controls (Journal, U. S. Sup. Ct., this Term, p. 97).

of his demurrer, and remitted the case to the Superior Court for further proceedings (R. 36–38). The Supreme Court rested its decision on the sole ground that the subject matter of the proceeding was an action for a penalty grounded on a foreign statute, which the courts of Rhode Island had no jurisdiction to entertain. The court relied upon and followed its earlier decision in *Robinson* v. *Norata*, 71 R. I. 256, 43 Atl. 2d 467.

On August 16, 1946, pursuant to the Supreme Court's opinion, the Superior Court entered final judgment in favor of defendant (R. 40). Under the Rhode Island practice, the record is now lodged in the Superior Court. See *Joslin Co.* v. *Providence*, 262 U. S. 668, 673.

SPECIFICATION OF ERRORS TO BE URGED

The Supreme Court of Rhode Island erred:

1. In holding that the courts of Rhode Island were not required by the Constitution of the United States to take jurisdiction of the action.

2. In holding that a consumer's action for damages under Section 205 (e) of the Emergency Price Control Act as amended is penal.

3. In holding that such an action is, in respect of the courts of Rhode Island, founded on a foreign statute.

4. In sustaining respondent's exception to the overruling of his demurrer to the jurisdiction of the Superior Court of Rhode Island over the subject matter of the action.

SUMMARY OF ARGUMENT

In order to bring the jurisdictional problem in sharper focus, we assume at the outset that a consumer's action for treble damages under Section 205 (e) of the Emergency Price Control Act is an action for a penalty.

The terms of the Act reflect a clear Congressional purpose to confer a concurrent jurisdiction over such actions on the courts of the several states. The courts of Rhode Island in which the present action was commenced have jurisdiction over actions for penalties. The Supreme Court of Rhode Island did not rest its opinion on any original defect in the jurisdiction of those courts, but on the sole ground that what was sued on was a penalty based on a foreign statute.

This holding nullifies the Supremacy Clause. "The United States is not a foreign sovereignty as regards the several States * * *" *Claflin* v. *Houseman,* 93 U. S. 130, 136. From this it follows that state courts cannot discriminate against federal rights and refuse to entertain a federally created cause of action where they would entertain a similar action brought under a state statute. *Second Employers' Liability Cases,* 223 U. S. 1; *McKnett* v. *St. Louis & S. F. Ry. Co.,* 292 U. S. 230.

The court below confused the Full Faith and Credit Clause with the Supremacy Clause; it erred in analogizing the United States to a sister state. The laws of the United States are the supreme law

of the land; those of a sister state are not. Once the Supremacy Clause applies, the circumstance that a penalty is involved is immaterial. The earliest laws of the United States expressly provided that penalties might be enforced by actions in state courts, and *Tennessee* v. *Davis*, 100 U. S. 257, which upheld the removal of a state prosecution into a federal court, disposed of the notion that there was anything inherently impossible or unconstitutional in trying in the courts of one sovereignty an offense against the laws of another sovereignty.

It is significant that the courts of eleven states have sustained their jurisdiction to entertain actions brought under Section 205 (e) of the Emergency Price Control Act, and that this includes states which regard such proceedings as penal.

2. Since the right sued on in the courts below was created by a federal statute, "the action of a state court must be in accord with the federal statute and the federal rule as to its application, rather than state statute, rule or policy." *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, 52–33, and cases there cited. The court below, which undertook to decide for itself the nature of the statute sued on, once more wrongly analogized the situation to that involving the statute of a sister state. This disregard of the Supremacy Clause makes for a lack of uniformity in the operation of a federal statute, and effectively nullifies national policy under the guise of conflict-of-laws characterization.

Under the federal rule, see *Huntington* v. *Attrill*, 146 U. S. 657, the consumer's action under the Emergency Price Control Act is remedial and not penal. The action for double damages under the Fair Labor Standards Act has been held remedial. *Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 583–584. There is no difference of substance between the two, and most state courts have joined in characterizing actions under both statutes as remedial. In the present case, recovery in the Superior Court was limited to the amount of the overcharge plus an attorney's fee; it is difficult to conceive of a proceeding more inherently remedial. And the court below recognized that it was bound to enforce even federal statutes which gave rise to remedial actions.

ARGUMENT

We assume *arguendo* at the outset that the present action—a consumer's action for treble damages under Section 205 (e) of the Emergency Price Control Act as amended—is an action for a penalty even though the actual recovery here was limited to the amount of the overcharge plus an attorney's fee. We make that assumption in order to bring more sharply into focus our contention that, since the courts of Rhode Island are open to actions for penalties founded upon state law, they cannot consistently with the Supremacy Clause of the Constitution refuse to take jurisdiction of similar actions founded on federal law. Thereafter, once the basic question of discrimination against a federal cause

of action is disposed of, we proceed to show that, since the consumer's action under the Emergency Price Control Act is a federal right, its nature must be judged by federal standards, and that, under the decisions of this Court, it is clearly a remedial action and not one for a penalty, even though multiple damages plus an attorney's fee may be recovered. That being so, *a fortiori* the Rhode Island courts cannot refuse to entertain such actions.

I. A STATE COURT MAY NOT REFUSE TO TAKE JURISDICTION OF AN ACTION BASED ON FEDERAL LAW WHEN IT HAS AND REGULARLY EXERCISES JURISDICTION OVER SIMILAR ACTIONS BASED ON STATE LAW

Under ths heading, as we have indicated, we assume *arguendo* that the consumer's action under the Emergency Price Control Act is one for a penalty.

1. We start with the terms of the statute; these reflect a clear Congressional purpose to confer a concurrent jurisdiction over such actions on the courts of the several states.

Section 205 (c) (*infra*, p. 43), provides that—

> The district courts shall have jurisdiction of criminal proceedings * * * and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act.

This is obviously broad enough to comprehend actions for statutory damages under Section 205 (e), which itself goes on to provide that "Any ac-

tion under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction." Moreover, the amendment of Section 205 (e) made by the Stabilization Extension Act of 1944 provides that "all suits under subsection (e) of this section shall be brought in the district or county in which the defendant resides or has a place of business, an office, or an agent"; and the reference to "county" as well as to "district" is intelligible only on the basis of concurrent jurisdiction in state tribunals.

There is no need to belabor the point. The statute is clear; Congress [4] and this Court [5] have each assumed that it means what it says; and neither respondent nor the court below questions that Congress intended consumer actions to be brought in the state courts.

2. We turn then to an examination of the Rhode Island statutes conferring jurisdiction upon the courts below.

The District Courts of that State have "exclusive original jurisdiction" of all civil actions involving up to $1,000. Gen. Laws of R. I. (1938), c. 500, § 28. The Superior Court has jurisdiction to try

[4] Sen. Rep. 931, 77th Cong., 2d sess., referring to actions under Section 205 (e), states (p. 10): "All such actions may be brought in any Federal court or State court of competent jurisdiction * * *"

[5] *Yakus* v. *United States*, 321 U. S. 414, 432; *Bowles* v. *Willingham*, 321 U. S. 503, 511–512; *Porter* v. *Lee*, Nos. 1116–1117, Oct. T. 1945; *Porter* v. *Dicken*, No. 1118, Oct. T. 1945, both decided May 27, 1946.

and determine *de novo* all such actions properly appealed from the District Courts. *Ibid.*, c. 496, § 10; c. 525, § 7; c. 526, § 6. This jurisdiction specifically includes actions for civil penalties, except that here the limitation on a District Court's competence is $500. *Ibid.*, c. 631, § 4; cf. c. 526, § 6.

The present action was originally brought for $900 (R. 2–3). There was no objection to the District Court's jurisdiction based on the amount of the *ad damnum* (cf. R. 3–4). The District Court entered decision in petitioner Testa's favor in the amount of $680 (R. 2). After appeal to the Superior Court and a trial there *de novo*, a verdict was directed for Testa for $360 (R. 30–31). This was held error by the Supreme Court of Rhode Island solely on the ground that no Rhode Island court had jurisdiction to entertain the action, because what was sued for was held to be a penalty based on a foreign statute. The opinion below did not rest in any respect on any original defect in the District Court's jurisdiction; it rested solely on the federal ground; and it followed and adopted (R. 38) the reasoning of *Robinson v. Norato*, 71 R. I. 256, 43 Atl. 2d 467, where the action had been originally commenced in the Superior Court.

We have, then, an action brought in the proper state court. Without question a similar action founded on a similar Rhode Island statute would have been entertained. The narrow question at this juncture, therefore, is whether Rhode Island can

refuse to assume jurisdiction because the right asserted is based on a federal statute.

3. The court below held, following and adopting *Robinson* v. *Novato, supra,* that Rhode Island could refuse. It reasoned that Section 205 (e), under the firmly established rule in Rhode Island,* was a penal statute in an international sense; that whether a particular statute is penal or remedial is to be determined by the law of the forum; that while the several states and the United States are not foreign states *vis-à-vis* each other in the public international law sense, they are such in the private international law sense except for the compulsion of the Full Faith and Credit Clause, which does not require enforcement of foreign penalties; that "the supremacy clause of the federal Constitution cannot * * * be legitimately construed to compel state courts to take jurisdiction and enforce such penal statutes" (43 Atl. 2d at 475); and that "the federal Constitution does not require us to treat the United States in a matter of this nature more favorably than we do a sister state of the Union. The contrary view would make the state courts, nolens volens, in effect, inferior federal courts to enforce *all* federal statutes, whenever Congress so declares" (*Ibid.*).

This reasoning, as we shall show, utterly nullifies the Supremacy Clause, and results in a demonstrable discrimination against rights arising under the federal laws.

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*McLay v. Slade, 48 R. I. 357; O'Reilly v. New York & N. E. R. R. Co., 16 R. I. 388.

4. The second clause of Article VI of the Constitution commands that—

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

It follows that, as Mr. Justice Bradley pointed out for the Court in *Claflin* v. *Houseman,* 93 U. S. 130, 136–137:

> The laws of the United States are laws in the several States, and just as much binding on the citizens and courts thereof as the State laws are. The United States is not a foreign sovereignty as regards the several States, but is a concurrent, and, within its jurisdiction, paramount sovereignty. Every citizen of a State is a subject of two distinct sovereignties, having concurrent jurisdiction in the State,—concurrent as to place and persons, though distinct as to subject-matter. Legal or equitable rights, acquired under either system of laws, may be enforced in any court of either sovereignty competent to hear and determine such kind of rights and not restrained by its constitution in the exercise of such jurisdiction. Thus, a legal or equitable right acquired under State laws, may be prosecuted in the State courts, and also, if the parties reside in different States, in the Federal courts. So rights, whether legal or equitable, acquired under the laws of the

> United States, may be prosecuted in the United States courts, or in the State courts, competent to decide rights of the like character and class; * * * If an act of Congress gives a penalty to a party aggrieved, without specifying a remedy for its enforcement, there is no reason why it should not be enforced, if not provided otherwise by some act of Congress, by a proper action in a State court. The fact that a State court derives its existence and functions from the State laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the State laws. The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent. The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the State and Federal governments. It is often the cause or the consequence of an unjustifiable jealousy of the United States government, which has been the occasion of disastrous evils to the country.

Accordingly, it has been repeatedly held by this Court that state courts cannot discriminate against federal rights and refuse to entertain causes of ac-

tion based on federal statutes where they would entertain a similar action brought under a state statute; and this is as true when Congress creates a new cause of action as when it merely alters the principles governing rights previously recognized. *Second Employers' Liability Cases* (*Mondou* v. *New York, N. H. & H. R. Co.*), 223 U. S. 1, 56–59; *Minneapolis & St. Louis R. R.* v. *Bombolis*, 241 U. S. 211, 221–223; *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 233; *Miles* v. *Illinois Central R. Co.*, 315 U. S. 698, 703; *Herb* v. *Pitcairn*, 324 U. S. 117. The award of relief upon the federal cause of action involves no delegation of federal judicial power to the state courts, but is simply an exercise by the state courts of their ordinary jurisdiction to pass upon rights regardless of the source thereof. While there is no obligation upon the states to provide a forum for the enforcement of the federally created right where there is otherwise no state court of appropriate jurisdiction, cf. *Douglas* v. *New Haven R. Co.*, 279 U. S. 377,[1] none the less, if there is an avail-

[1] There a New York statute gave the trial court discretion as to whether it would entertain actions brought by non-residents of New York against foreign corporations. The trial court chose not to entertain the action, which arose under the Federal Employers' Liability Act, and its action in that respect was affirmed. No discrimination against the federally created cause of action was involved, since a similar cause of action, if provided for by New York law, would have met the same fate. In the present case, however, both the plaintiff and defendant were residents of Rhode Island, and no such discretion was vested in the trial courts.

able state court with jurisdiction over similar actions arising out of state law, there can be no discrimination against the federally created right. *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, 233, *supra*. Here, as we have pointed out above, pp. 10–11, there was such a forum and it was available for state causes action of a like nature.[8]

Brief discussion of some of the leading cases cited above, p. 15, will serve to underscore the basis for the decisions.

In *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, the plaintiff brought suit for personal injuries in a Connecticut court, relying on the Federal Employers' Liability Act, which provided, *inter alia*, that "the jurisdiction of the courts of the United States under this Act shall be concurrent with that of the courts of the several States." The Supreme Court of Errors of Connecticut affirmed a ruling sustaining a demurrer, on the ground that the state courts were free to decline cognizance of actions under the F. E. L. A., since the policy of that law was at variance with the established policy of Connecticut in respect of employers' liability, with particular reference to the fellow-servant rule, and because it would be inconvenient for the same court to apply, in the same general class of cases, the congressional standard in some and the different standards of the state in others. *Mondou* v. *New York*,

[8] It is clear, of course, that the jurisdictional ruling below did not proceed on any non-federal ground. Cf. *Herb* v. *Pitcairn*, 324 U. S. 117, 325 U. S. 77.

N. H. & H. R. Co., 82 Conn. 373, following *Hoxie* v. *New York, N. H. & H. R. Co.*, 82 Conn. 352. This Court reversed, saying (223 U. S. at 56–57):

> * * * we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure. We say "when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion," because we are advised by the decisions of the Supreme Court of Errors that the Superior Courts of the State are courts of general jurisdiction, are empowered to take cognizance of actions to recover for personal injuries and for death, and are accustomed to exercise that jurisdiction, not only in cases where the right of action arose under the laws of that State, but also in cases where it arose in another State, under its laws, and in circumstances in which the laws of Connecticut give no right of recovery, as where the causal negligence was that of a fellow-servant.
>
> The suggestion that the act of Congress is not in harmony with the policy of the

> State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State. * * *

The opinion then goes on to quote from *Claflin* v. *Houseman*, 93 U. S. 130, the excerpts already set out above, pp. 13–14. It is significant that both the Connecticut court and counsel arguing for the affirmance of its judgment (223 U. S. at 14–16) made the same contentions that were made by the Rhode Island court in *Robinson* v. *Norato, supra*, on which the opinion below rests.

In *Minneapolis & St. Louis R. R.* v. *Bombolis*, 241 U. S. 211, an action under the F. E. L. A. was brought in a Minnesota court. Under the statutes of that state, provision was made for a verdict by less than 12 jurors in certain instances. Such a verdict having been rendered, the railroad claimed error, on the ground that, since rights under the statute were federal rights, the Seventh Amendment, which required a unanimous common law jury verdict, became applicable. This court held that a state court did not, while enforcing a federal right, derive its authority as a court from the

United States but from the state, and that consequently the Seventh Amendment was inapplicable. Mr. Chief Justice White, for the Court, emphasizing the distinction between the source of the right being enforced and the source of the authority of the court enforcing the right, said (pp. 221–223):

> * * * lawful rights of the citizen, whether arising from a legitimate exercise of state or national power, unless excepted by express constitutional limitation or by valid legislation to that effect, are concurrently subject to be enforced in the courts of the State or nation when such rights come within the general scope of the jurisdiction conferred upon such courts by the authority, State or nation, creating them. This principle was made the basis of the first Federal Judiciary Act and has prevailed in theory and practice ever since as to rights of every character, whether derived from constitutional grant or legislative enactment, state or national. In fact this theory and practice is but an expression of the principles underlying the Constitution and which cause the governments and courts of both the Nation and the several States not to be strange or foreign to each other in the broad sense of that word, but to be all courts of a common country, all within the orbit of their lawful authority being charged with the duty to safeguard and enforce the right of every citizen without reference to the particular exercise of governmental power from which the right may have arisen, if only the author-

ity to enforce such right comes generally within the scope of the jurisdiction conferred by the government creating them. And it is a forgetfulness of this truth which doubtless led to the suggestion made in the argument that the ruling in *Mondou* v. *New York, New Haven & Hartford R. R.*, 223 U. S. 1, had overthrown the ancient and settled landmarks and had caused state courts to become courts of the United States exercising a jurisdiction conferred by Congress, whenever the duty was cast upon them to enforce a Federal right. It is true in the *Mondou Case* it was held that where the general jurisdiction conferred by the state law upon a state court embraced otherwise causes of action created by an act of Congress, it would be a violation of duty under the Constitution for the court to refuse to enforce the right arising from the law of the United States because of conceptions of impolicy or want of wisdom on the part of Congress in having called into play its lawful powers. But that ruling in no sense implied that the duty which was declared to exist on the part of the state court depended upon the conception that for the purpose of enforcing the right the state court was to be treated as a Federal court deriving its authority not from the State creating it, but from the United States. On the contrary the principle upon which the *Mondou Case* rested, while not questioning the diverse governmental sources from which state and national courts drew their

> authority, recognized the unity of the governments, national and state, and the common fealty of all courts, both state and national, to both state and national constitutions, and the duty resting upon them, when it was within the scope of their authority, to protect and enforce rights lawfully created, without reference to the particular government from whose exercise of lawful power the right arose.

In *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230, petitioner, a citizen of Tennessee, sued the respondent railway, a foreign corporation, in Alabama, under the Federal Employers' Liability Act in respect of an injury suffered in Tennessee. Prior to 1907, no Alabama court had jurisdiction of any suit against a foreign corporation unless the cause of action had arisen within the state. In that year, an Alabama statute permitted such actions "whenever, either by common law or the statutes of another state, a cause of action, either upon contract or in tort, has arisen in such other state." The Alabama court held, however, that there was no jurisdiction to entertain McKnett's action, since it had arisen in another state under federal law. This Court reversed, pointing out that the power of a state to determine the limits of its courts' jurisdiction and the character of the controversies to be heard in them was subject to the restrictions of the Federal Constitution. Mr. Justice Brandeis, speaking for the Court, said (292 U. S. at 233–234):

While Congress has not attempted to compel states to provide courts for the enforcement of the Federal Employers' Liability Act, *Douglas* v. *New York, N. H. & H. R. Co.*, 279 U. S. 377, 387, the Federal Constitution prohibits state courts of general jurisdiction from refusing to do so solely because the suit is brought under a federal law. The denial of jurisdiction by the Alabama court is based solely upon the source of law sought to be enforced. The plaintiff is cast out because he is suing to enforce a federal act. A state may not discriminate against rights arising under federal laws.

5. The basic error of the court below lies in its confusing the Full Faith and Credit Clause with the Supremacy Clause.

The Full Faith and Credit Clause, whatever its requirements as to judgments (cf. *Fauntleroy* v. *Lum*, 210 U. S. 230; *Loughran* v. *Loughran*, 292 U. S. 216, 227–228; *Milwaukee County* v. *White Co.*, 296 U. S. 268), does not require a state to enforce in its courts causes of actions arising elsewhere which are penal or which conflict with the public policy of the forum (e. g., *Union Trust Co.* v. *Grosman*, 245 U. S. 412; *Bothwell* v. *Buckbee, Mears Co.*, 275 U. S. 274, 277–279; cf. *Moore* v. *Mitchell*, 281 U. S. 18). From this the court below reasoned that "the federal Constitution does not require us to treat the United States in a matter of this nature more favorably than we do a sister state of the

Union" (43 Atl. 2d at 475), and that adoption of petitioners' views would result in "granting a forum for the enforcement of a right under a federal statute that we deem to be penal, whereas we refuse to enforce a similar right under a penal statute of our sister state of Massachusetts" (43 Atl. 2d at 474). But the short answer to all of this is the Supremacy Clause—"the Laws of the United States * * * shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." The argument of the court below fails utterly because it analogizes a state of the Union to the United States, and because it assumes that, since the laws of Massachusetts are not the supreme law of the land, therefore, the laws of the United States cannot be such either. But, as this Court has said, "The disposition to regard the laws of the United States as emanating from a foreign jurisdiction is founded on erroneous views of the nature and relations of the State and Federal governments." *Claflin* v. *Houseman*, 93 U. S. 130, 137. There can be no conflict between federal and state policies within the boundaries of a single state, and, insofar as there might otherwise be any disagreement between them, the Supremacy Clause requires that the national policy must prevail. Or, to paraphrase but very slightly what was said in *Second Employers' Liability Cases*, 223 U. S. 1, 57, *supra*, p. 18.

> When Congress, in the exertion of the power confided to it by the Constitution, adopted the Emergency Price Control Act, it spoke for all the people and all the States, and thereby established a policy for all. That policy is as much the policy of Rhode Island as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State.[9]

The suggestion of the court below that the operation of the Supremacy Clause is confined to cases of "public international law" (43 Atl. 2d at 471) is, of course, clearly wrong. As we have pointed out above, *supra*, pp. 15–22, this Court has many times held that state courts of otherwise competent jurisdiction are required to entertain private causes of action created by Congress.

It may be that by its reference to "public" as against "private" international law the court below meant to suggest that the Supremacy Clause invalidates any state statute which conflicts with a federal statute, but does not render the federal statute supreme over non-statutory doctrines of state law. Such a view would fly in the face of the command of the Supremacy Clause, which in terms is addressed directly to state judges and so is oper-

[9] There is likewise no analogy in cases such as *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265, relied on by the court below. That case holds that the federal courts are not required to give full faith and credit to the penal statutes of the states. To hold that principle controlling here would be to make the Supremacy Clause operate in reverse.

ative upon judge-made rules of state law. See *McKnett* v. *St. Louis & S. F. Ry. Co.*, 292 U. S. 230 (state doctrine as to suit against foreign corporations on out-of-state causes of action); *Mondou* v. *New York, N. H. & H. R. Co.*, 223 U. S. 1, 55–56 (state doctrine as to fellow-servant rule): cf. *United States* v. *Pink*, 315 U. S. 203, 231 (state doctrine as to operation of foreign expropriation decrees). Nor is any reasonable basis apparent to support the view that a state jurisdictional rule of statutory origin which discriminates against federally created causes of action should be invalidated but that a rule to the same effect evolved by state courts without resort to statutory materials should be permitted to thwart the purpose of Congress. If such a distinction has any validity, it would work the other way. Cf. *Douglas* v. *New Haven R. Co.*, 279 U. S. 377, 387–388.

6. While, as above noted, the Full Faith and Credit Clause never has been interpreted as requiring one state to give effect to the contrary public policy of another, once the Supremacy Clause applies, the circumstances that a penalty is involved becomes immaterial. *Claflin* v. *Houseman*, 93 U. S. 130, 137; *First National Bank* v. *Morgan*, 132 U. S. 141; see Schweppe, *State Court Jurisdiction of Claims for Federal Penalties, Taxes, and Customs Duties* (1936) 11 Wash. L. Rev. 152. There is no basis, either in precedent or reason, for limiting the state courts' duty of not discriminating against federally created causes of actions to

cases where such actions may be designated as remedial.

Indeed, as Mr. Charles Warren has shown, the earliest laws of the Republic provided that federal penalties might be enforced by actions in state courts. See *Federal Criminal Laws and the State Courts* (1925) 38 Harv. L. Rev. 545. . A series of acts prior to 1800 conferred concurrent jurisdiction on the state courts to entertain proceedings for the recovery of fines, penalties, and forfeitures.[10] Other laws gave state courts jurisdiction over causes involving the revenue[11] and over the remission of penalties imposed under the customs or tax laws.[12] Jurisdiction over even federal criminal offenses was vested in state tribunals.[13]

A similar trend was manifest for nearly twenty years after 1801. Congress again conferred concurrent jurisdiction on the state courts to entertain suits for federal penalties and to prosecute federal

[10] Section 10 of the Act of June 5, 1794, c. 45, 1 Stat. 373, 375; Section 5 of the Act of June 5, 1794, c. 48, 1 Stat. 376, 378; Section 7 of the Act of April 18, 1796, c. 13, 1 Stat. 452, 453.

The statutory citations in this footnote and the ones following are largely taken from Mr. Warren's paper. We set them out in detail primarily for the Court's convenience.

[11] Section 9 of the Act of June 5, 1794, c. 49, 1 Stat. 378, 380.

[12] Section 2 of the Act of March 3, 1797, c. 13, 1 Stat. 506. See also the enforcement provisions in the import and tonnage duties Act of March 2, 1799, c. 22, 1 Stat. 627.

[13] Act of July 16, 1798, c. 83, 1 Stat. 609; Section 28 of the Act of March 2, 1799, c. 43, 1 Stat. 733, 740.

criminal offenses.[14] Fines, penalties and forfeitures were made recoverable in the state courts under the provisions of the Embargo Acts as well as under laws imposing customs duties, and internal revenue and excise taxes.[15]

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[14] Penalties: Act of March 8, 1806, c. 14, 2 Stat. 354, extended by the Act of April 21, 1808, c. 51, 2 Stat. 489.

Criminal Prosecutions: Sections 35 and 36 of the Act of April 30, 1810, c. 37, 2 Stat. 592, 603; Sections 37 and 38 of the Act of March 3, 1825, c. 64, 4 Stat. 102, 113.

And see Section 305 of the Act of June 8, 1872, c. 335, 17 Stat. 283, 323, R. S. 3833, now 39 U. S. C. 825, which still confers on state courts jurisdiction of prosecutions of all offenders under the postal laws.

[15] Embargo Acts: Section 6 of the Act of January 9, 1808, c. 8, 2 Stat. 453, 454; Section 6 of the Act of March 12, 1808, c. 33, 2 Stat. 473, 475; Section 14 of the Act of April 25, 1808, c. 66, 2 Stat. 499, 502; Section 12 of the Act of January 9, 1809, c. 5, 2 Stat. 506, 510; Section 18 of the Act of March 1, 1809, c. 24, 2 Stat. 528, 532; Section 4 of the Act of June 28, 1809, c. 9, 2 Stat. 550, 551; Section 3 of the Act of May 1, 1810, c. 39, 2 Stat. 605, 606; Section 4 of the Act of April 4, 1812, c. 49, 2 Stat. 700, 701; Section 3 of the Act of April 14, 1812, c. 56, 2 Stat. 707, 708; Section 14 of the Act of December 17, 1813, c. 1, 3 Stat. 88, 92.

Customs Acts: Section 14 of the Act of July 24, 1813, c. 21, 3 Stat. 35, 38; Section 25 of the Act of April 20, 1818, c. 79, 3 Stat. 433, 438; Section 3 of the Act of March 2, 1821, c. 14, 3 Stat. 616, 617; Section 35 of the Act of March 1, 1823, c. 21, 3 Stat. 729, 739; Section 5 of the Act of March 3, 1823, c. 58, 3 Stat. 781, 782.

Internal Revenue and Excise Taxes: Section 6 of the Act of July 24, 1813, c. 25, 3 Stat. 42, 44; Section 10 of the Act of July 24, 1813, c. 26, 3 Stat. 44, 47; Section 6 of the Act of July 29, 1813, c. 35, 3 Stat. 49, 51; Section 5 of the Act of August 2, 1813, c. 39, 3 Stat. 72, 73; Section 13 of the Act of August 2, 1813, c. 53, 3 Stat. 77, 80; Section 21 of the Act of December 21, 1814, c. 15, 3 Stat. 152, 157; Section 24 of the Act of January 18, 1815, c. 23, 3 Stat. 186, 191; Section 14 of the Act of March 3, 1815, c. 100, 3 Stat. 239, 242.

A contrary trend commenced soon afterwards. In part it was influenced by Northern opposition to Fugitive Slave legislation and by Southern opposition to ultimate review of any federal questions arising in the course of state court litigation; in part, also, it reflected a dissatisfaction on the part of the supporters of a strong federal judiciary with the existing scheme, which still conferred such a wide concurrent jurisdiction on the state courts. See Warren, *supra*, 38 Harv. L. Rev. at 573–584. That trend received doctrinal support from dicta in this Court, uttered by Story [16] and others;[17] from the weighty imprimatur of Chancellor Kent in his *Commentaries;*[18] and from numerous state decisions, of which *United States* v. *Lathrop*, 17 Johns. 4 (N. Y. 1819), which held that it was not competent for Congress to confer jurisdiction on a state court to recover penalties under federal laws, is perhaps the best known.[19] The resultant paradox is thus summed up by Mr. Warren (38 Harv. L. Rev. at 581):

> The States thus not only denied the power of Congress to impose duties upon them, but

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[16] *Martin* v. *Hunter's Lessee*, 1 Wheat. 304, 330, 337; *Houston* v. *Moore*, 5 Wheat. 1, 69; *Prigg* v. *Pennsylvania*, 16 Pet. 539, 615.

[17] *Houston* v. *Moore*, 5 Wheat. 1, 27–28, *per* Washington, J.; *United States* v. *Bailey*, 9 Pet. 238, 259, *per* McLean, J., dissenting; *Prigg* v. *Pennsylvania*, 16 Pet. 539, 630, *per* Taney, C. J., dissenting.

[18] 1 Kent Comm.* 387–404.

[19] Significantly, it was relied on by the court below here. 43 Atl. 2d at 474–475.

> even denied its power to permit them to exercise jurisdiction under Federal law. Hence, a form of legislation enacted by Congress, out of a desire to allay State jealousy and to reduce Federal power, became regarded by the States as an undue assumption of Federal power and an infringement on the sovereignty of the States.

But despite dicta to the effect that the tribunals of one sovereignty were not competent to try criminal offenses against another, Congress made provision for just such situations, by enacting a series of removal acts, whereby state prosecutions against federal officers might be removed in stated instances to the federal courts, there to proceed to verdict and, it might be, to sentence. All of these measures were, of course, designed to lessen the effectiveness of sectional opposition to national policies. The removal acts of 1815–1817 [20] were occasioned by New England's hostility to the War of 1812; the removal Act of 1833, the famous Force Bill,[21] was a part of Jackson's response to Nullification; while the Removal Acts of 1863–1869 [22] were part and parcel of the enforcement machinery of Reconstruction.

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[20] Section 8 of the Act of February 4, 1815, c. 31, 3 Stat. 195, 198; Section 6 of the Act of March 3, 1815, c. 94, 3 Stat. 231, 233; Section 2 of the Act of March 3, 1887, c. 109, 3 Stat. 396.

[21] Section 3 of the Act of March 2, 1833, c. 57, 4 Stat. 632, 633.

[22] Section 5 of the Act of March 3, 1863, c. 81, 12 Stat. 755, 756; Section 50 of the Act of June 30, 1864, c. 173, 13 Stat. 223, 241; Section 9 of the Act of March 7, 1864, c. 20, 13 Stat. 14, 17; Sections 67 and 68 of the Act of July 13, 1866, c. 184,

The constitutionality of the removal acts was finally sustained, and all doubts set at rest, by the decision in *Tennessee* v. *Davis*, 100 U. S. 257, in which a Federal internal revenue officer, indicted for murder in the state court, sought to remove the prosecution into the Federal Circuit Court. This Court said (100 U. S. at 271–272):

> The imaginary difficulties and incongruities supposed to be in the way of trying in the Circuit Court an indictment for an alleged offence against the peace and dignity of a State, if they were real, would be for the consideration of Congress. But they are unreal. * * * The circuit courts of the United States have all the appliances which are needed for the trial of any criminal case. They adopt and apply the laws of the State in civil cases, and there is no more difficulty in administering the State's criminal law. * * * so long as they keep within the jurisdiction assigned to them, their general powers are adequate to the trial of any case.

As Mr. Warren says (38 Harv. L. Rev. at 593),

> The announcement of this doctrine shattered all the old statements by Kent, Story, and other Judges as to the impossibility of trying in the Courts of one sovereignty, crim-

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14 Stat. 98, 171–172; Section 3 of the Act of April 9, 1866, c. 31, 14 Stat. 27; Act of January 22, 1869, c. 13, 15 Stat. 267. Section 3 of the Act of March 2, 1833, and Section 67 of the Act of July 13, 1866, with some later changes, became R. S. 643, the substance of which was reenacted as Section 33 of the Judicial Code, 28 U. S. C. 76.

inal offences against the law of another sovereignty. Thereafter, it was clear that if there was nothing inherently impossible in a Federal Circuit Court's trying, on removal, a man indicted by a State for violating a State criminal statute, equally there could be nothing inherently impossible in a State Court's trying a man for violating a Federal criminal statute.

And, *a fortiori*, there is nothing inherently impossible in a state court's entertaining an action for the recovery of a civil penalty imposed by a federal regulatory statute.[22] The later dicta to the contrary in *Huntington* v. *Attrill*, 146 U. S. 657, 672, and *Robertson* v. *Baldwin*, 165 U. S. 275, 278, do little more than to state the result of decisions handed down while the influence of Kent and Story and *United States* v. *Lathrop*, 17 Johns. 4, *supra*, was in the ascendant. Such doctrinal foundation as these expressions had was swept away by *Tennessee* v. *Davis*, 100 U. S. 257, and in any event they were clearly rejected in substance when the Court in *Second Employers' Liability Cases*, 223 U. S. 1, 57–58, quoted approvingly from *Claflin* v. *Houseman*, 93 U. S. 130, 136–137. Given the principle

[22] Regardless of whether the damage action under Section 205 (e) be regarded as penal or remedial, it is purely civil in nature and not in any sense criminal. *Bowles* v. *Willingham*, 321 U. S. 503, 512; *Porter* v. *Warner Holding Co.*, No. 793, Oct. T. 1945, decided June 3, 1946; cf. *Helvering* v. *Mitchell*, 303 U. S. 391; *United States ex rel. Marcus* v. *Hess*, 317 U. S. 537. All criminal proceedings under the Emergency Price Control Act are required by Section 205 (c) to be brought in federal courts.

that the Supremacy Clause forbids discrimination by state courts against federally created causes of action, it is clear, not only that there was nothing inherently impossible in a state court's voluntary assumption of jurisdiction over penal proceedings of federal origin, but also that Congress may require such assumption by state courts otherwise competent.

7. While we do not deem the circumstance controlling here, we think it none the less significant that the courts of eleven other states have sustained their jurisdiction to entertain actions brought under Section 205 (e) of the Emergency Price Control Act.

The Supreme Courts of Indiana and of Oregon sustained the assumption of jurisdiction of actions brought by the Price Administrator which they expressly held to be penal in nature. *Bowles* v. *Heckman*, 64 N. E. 2d 660 (Ind.); *Bowles* v. *Barde Steel Co.*, 164 Pac. 2d 692 (Ore.). The Supreme Courts of California and North Carolina similarly upheld consumer actions, apparently considering them to be penal. *Miller* v. *Municipal Court of Los Angeles*, 22 Cal. 2d 818; *Hilgreen* v. *Sherman's Cleaners & Tailors, Inc.*, 225 N. C. 656. In eight other states the courts have sustained jurisdiction of consumer actions on the ground that they were remedial in nature, but most of the decisions go on to hold, some more explicitly than others, that state jurisdiction would be mandatory none the less, even if the action were regarded as penal. *Lapinski* v. *Copacino*, 131

Conn. 119; *Regan* v. *Kroger Grocery and Baking Co.*, 386 Ill. 284; *Lambros* v. *Brown*, 184 Md. 350; *Schaffer* v. *Leimberg*, 318 Mass. 396; *Desper* v. *Warner Holding Co.*, 219 Minn. 607; *Schaubach* v. *Anderson*, 184 Va. 795; *Walker* v. *Gilman*, 171 Pac. 2d 797 (Wash.).

The court below, so far as we are aware, is the only state court of last resort that has held to the contrary.

One other tribunal has noted its disagreement with the reasoning of the Rhode Island court. The Supreme Court of Mississippi held that the state courts were required to take jurisdiction of actions for double damages under Section 16 (b) of the Fair Labor Standards Act, 29 U. S. C. 216 (b), although it regarded such proceedings as penal in nature. *Mengel Co.* v. *Ishee*, 192 Miss. 366. The language of that Act is virtually identical with the provision involved here.[24]

II. THE CHARACTER OF THE RIGHT CREATED BY A FEDERAL STATUTE IS GOVERNED BY THE FEDERAL RULE, EVEN WHEN THE RIGHT IS SOUGHT TO BE ENFORCED IN A STATE COURT

The right sued on in the courts below was one created by a federal statute. It follows that the

[24] Fair Labor Standards Act, Sec. 16 (b): "Action to recover such liability may be maintained in any court of competent jurisdiction * * *".

Emergency Price Control Act, Sec. 205 (e): "Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction."

nature of the right, its extent, and the limitations with which its exercise might be surrounded, are federal questions for ultimate decision here; and the action of the state courts must give effect to such decision. As this Court pointed out but recently, where the "correct decision depends upon a construction of a federal act * * * the action of a state court must be in accord with the federal statute and the federal rule as to its application, rather than state statute, rule or policy." *Baltimore & Ohio R. Co.* v. *Kepner*, 314 U. S. 44, 52–53, citing *Calhoun Gold Mining Co.* v. *Ajax Gold Mining Co.*, 182 U. S. 499, 505; *Tullock* v. *Mulvane*, 184 U. S. 497, 505, 512–513; *Cincinnati & Tex. Pac. Ry.* v. *Rankin*, 241 U. S. 319, 326–327; *Chesapeake & Ohio Ry. Co.* v. *Martin*, 283 U. S. 209, 213; *Chesapeake & Ohio Ry. Co.* v. *Kuhn*, 284 U. S. 44, 47; *Federal Land Bank* v. *Priddy*, 295 U. S. 229, 231. This rule is, of course, simply a consequence of the Supremacy Clause, and, certainly since *Cohens* v. *Virginia*, 6 Wheat. 264, 379, and the days of Spencer Roane, has never been seriously questioned.

The court below, however, reasoned that it could determine for itself the character of the federal statute—penal or remedial—and, holding it to be penal, refused to enforce rights arising thereunder, The court's opinion suggests that, but for this characterization of the law as penal, the state courts would have been required to assume jurisdiction of

the action.[25] The basic error of this approach is the false analogy between the United States and a sister state, which led the court below to treat the problem as calling simply for the application of the familiar conflict-of-laws principle that the character of a foreign statute is to be independently determined by the law of the forum. See *Huntington* v. *Attrill*, 146 U. S. 657, 683. In other words the court proceeded on the assumption that it was bound only by the Full Faith and Credit Clause, and, here, again, entirely overlooked the Supremacy Clause—whose command, it may be emphasized, is in terms directed to "the Judges in every State."

To permit the courts of the several states to construe federal statutes independently would not only result in lack of uniformity in the operation of an Act of Congress, it might well result in defeating the national purpose through the guise of classification or characterization. The consequence, as in this instance, would be that a federal statute is enforceable in some state courts but not in others.

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[25] See *Robinson* v. *Norato*, 43 Atl. 2d at 472, speaking of *Second Employers' Liability Cases*, 223 U. S. 1, 57, 59: "* * * even in those cases, we do not understand that court to hold that a state may not refuse to entertain suits arising under a law of the United States if the state court holds that such law is penal in its nature. Those cases were not cases where the state court had held a federal statute before it to be penal but each was a case where the state court had refused to enforce the statute because it was contrary to the policy of the state."

An apt illustration of this possibility is found in the actual operation of the Massachusetts wrongful death statutes, first enacted in 1840, which provide in substance that anyone causing the death of a human being shall incur a liability, not less than $500 nor more than $5,000 or $10,000, as the case may be, to be assessed with reference to the degree of culpability of the guilty party or his servants, which sum may be recovered by the heirs or dependents of the deceased by way of gratuity from the Commonwealth. See *Carey* v. *Berkshire R. Co.*, 1 Cush. 475; *Littlejohn* v. *Fitchburg Railroad*, 148 Mass. 478; *Mulhall* v. *Fallon*, 176 Mass. 266; *Boott Mills* v. *Boston & Maine Railroad*, 218 Mass. 582; *Putnam* v. *Savage*, 244 Mass. 83.

Actions brought on this statute in other states were originally held to be penal by the highest courts of Rhode Island, Connecticut, and Vermont. *O'Reilly* v. *New York & N. E. R. R. Co.*, 16 R. I. 388; *Cristilly* v. *Warner*, 87 Conn. 461; *Adams* v. *Fitchburg R. Co.*, 67 Vt. 76. Connecticut and Vermont in time receded from this view, overruled their earlier decisions, and now hold the Massachusetts wrongful death statute to be remedial. *Daury* v. *Ferraro*, 108 Conn. 386; *Wellman* v. *Mead*, 93 Vt. 322. Other states also consider the Massachusetts statute remedial. *Loucks* v. *Standard Oil Co.*, 224 N. Y. 99, *per* Cardozo, J.; *Hill* v. *Boston & M. R. Co.*, 77 N. H. 151. A similar state statute, imposing

a fixed penalty for causing death, has been held remedial by this Court. *Atchison, etc., Ry.* v. *Nichols,* 264 U. S. 348. But Rhode Island continues to adhere to its original view, that the Massachusetts wrongful death statute is penal, and that it cannot be sued on in the courts of Rhode Island. *McLay* v. *Slade,* 48 R. I. 357.

The circumstance that the Massachusetts statute applies unevenly throughout the Union may be inconvenient, but the laws of Massachusetts are not the supreme law of the land. The laws of the United States are, however; and that is why they must be given uniform effect by the courts of every state, in conformity with the federal rule. Any other result would open the door wide to a species of judicial nullification in which the process of construing the federal statute by the state court would be incident to the ultimate purpose of determining whether the statute is in conflict with state policy, i. e., whether it should be enforced. This is precisely what the Supremacy Clause was designed to prevent.

The federal rule, then, must be applied in construing the federal statute. *Baltimore & Ohio R. Co.* v. *Kepner,* 314 U. S. 44, *supra.* Under that rule it is clear that the consumer's action for multiple damages under Section 205 (e) of the Emergency Price Control Act as amended is remedial and not penal. The distinction between the two was laid

down in *Huntington* v. *Attrill*, 146 U. S. 657, 667, 668, 673-674:

> Penal laws, strictly and properly, are those imposing punishment for an offence committed against the State, and which, by the English and American constitutions, the executive of the State has the power to pardon. * * *
>
> The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual * * *.
>
> The question whether a statute of one State, which in some aspects may be called penal, is a penal law in the international sense, so that it cannot be enforced in the courts of another State, depends upon the question whether its purpose is to punish an offence against the public justice of the State, or to afford a private remedy to a person injured by the wrongful act.

See also *Dennick* v. *Railroad Co.*, 103 U. S. 11; *Texas & Pacific Ry. Co.* v. *Cox*, 145 U. S. 593; *Atchison, etc., Ry.* v. *Nichols*, 264 U. S. 348.

The circumstances that the statute prescribes a minimum recovery does not make it any the less remedial, *Brady* v. *Daly*, 175 U. S. 148; *Atchison, etc., Ry.* v. *Nichols*, 264 U. S. 348, nor is a statute providing for exemplary damages to be deemed penal for that reason. *James-Dickinson Co.* v. *Harry*, 273 U. S. 119. Accordingly, where an in-

jured party has been granted the right to recover multiple damages for violation of a statute, the action has been construed to be remedial. This is true of actions for treble damages under the Sherman Act (*Chattanooga Foundry* v. *Atlanta*, 203 U. S. 390), of actions for double damages brought in respect of violations of the Fair Labor Standards Act (*Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 583–584), and of actions to enforce double liability of stockholders (*Whitman* v. *Oxford National Bank*, 176 U. S. 559).

Consumer actions under Section 205 (e) of the Emergency Price Control Act were regarded by Congress as "actions to recover damages," which afforded "a remedy at law to persons damaged," analogous to the double-damage actions under the Fair Labor Standards Act. Sen. Rep. 931, 77th Cong., 2d sess., p. 9. Actions under the latter Act, as already noted, have been held to be remedial by this Court (*Overnight Motor Co.* v. *Missel*, 316 U. S. 572, 583–584),[28] and obviously nothing turns

[28] Other states also hold that actions for double damages under the Fair Labor Standards Act are remedial. E. g., *Forsyth* v. *Central Foundry Co.*, 240 Ala. 277; *Emerson* v. *Mary Lincoln Candies, Inc.*, 173 Misc. 531, 154 Misc. 353, affirmed, 261 App. Div. 879, 261 App. Div. 1044, affirmed, 287 N. Y. 577; *Tidewater Opt. Co.* v. *Wittcamp*, 179 Va. 545; cf. *Robertson* v. *Argus Hosiery Mills*, 121 F. 2d 285 (C. C. A. 6), certiorari denied, 314 U. S. 681. And see Reese, *Concurrent Jurisdiction of State and Federal Courts under Section 16 (b) of the Fair Labor Standards Act*, 27 Va. L. Rev. 328.

on the circumstance that treble damages were recoverable here as against double damages under the Fair Labor Standards Act. Indeed, in the present case, where recovery was limited to the amount of the overcharge plus counsel fees, the purchaser was merely restored to the position in which he would have been had he been charged the ceiling price. It is difficult to conceive of a proceeding more inherently remedial.

And, though it is not controlling, we deem it significant that most of the state courts which have dealt with consumers' actions under the Emergency Price Control Act regard them as remedial in nature. *Lapinski* v. *Copacino*, 131 Conn. 119; *Regan* v. *Kroger Grocery & Baking Co.*, 386 Ill. 284; *Lambros* v. *Brown*, 184 Md. 350; *Schaffer* v. *Leimberg*, 318 Mass. 396; *Desper* v. *Warner Holding Co.*, 219 Minn. 607; *Schaubach* v. *Anderson*, 184 Va. 795; *Walker* v. *Gilman*, 171 Pac. 2d 797 (Wash.).

We think it clear, therefore, that the consumer's action given by Section 205 (e) of the Emergency Price Control Act is remedial in nature, that its characterization by the court below as penal was error, and that it should have been enforced in the courts of Rhode Island.

CONCLUSION

The decision below is based upon a misconception of the nature of the federal system. The judgment

should therefore be reversed with instructions to enter judgment on the verdict.

Respectfully submitted.

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APPENDIX

Clause 2 of Article VI of the Constitution of the United States is as follows:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

The pertinent provisions of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, c. 325, 58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901 *et seq.*, are as follows:

> SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

* * * * *

205 (b) Any person who willfully violates any provision of section 4 of this Act, and any person who makes any statement or entry false in any material respect in any document or report required to be kept or filed under section 2 or section 202, shall, upon conviction thereof, be subject to a fine of not more than $5,000, or to imprisonment for not more than two years in the case of a violation of section 4 (c) and for not more than one year in all other cases, or to both such fine and imprisonment. Whenever the Administrator has reason to believe that any person is liable to punishment under this subsection, he may certify the facts to the Attorney General, who may, in his discretion, cause appropriate proceedings to be brought.

(c) The district courts shall have jurisdiction of criminal proceedings for violations of section 4 of this Act, and, concurrently with State and Territorial courts, of all other proceedings under section 205 of this Act. Such criminal proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred. Except as provided in section 205 (f) (2), such other proceedings may be brought in any district in which any part of any act or transaction constituting the violation occurred, and may also be brought in the district in which the defendant resides or transacts business, and process in such cases may be served in any district wherein the defendant resides or transacts business or wherever the defendant may be found: *Provided, however,* That all suits under subsection (e) of this section shall be brought in the district or county in which the defendant resides or has a place

of business, an office, or an agent.[1] Any such court shall advance on the docket and expedite the disposition of any criminal or other proceedings brought before it under this section. No costs shall be assessed against the Administrator or the United States Government in any proceeding under this Act.

(d) * * * In any suit or action wherein a party relies for ground of relief or defense upon this Act or any regulation, order, price schedule, requirement, or agreement thereunder, the court having jurisdiction of such suit or action shall certify such fact to the Administrator. The Administrator may intervene in any such suit or action.

(e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may,* within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action,[2] the seller shall be liable for reasonable attorney's fees and

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*Matter between asterisks was added by Section 108 (b) of the Stabilization Extension Act of 1944, and replaced the following clause: "bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

[1] Proviso added by Sec. 108 (a) of the Stabilization Extension Act of 1944.

[2] The Price Control Extension Act of 1946 (Public 548, 79th Cong., 2d sess.) replaced the words "such action" by "any action under this subsection."

costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however*, That such amount shall be the amount of the overcharge or overcharges, or $25, whichever is greater,[3] if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation.* For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be;** and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.** If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer † either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the ac-

[3] The words after "overcharges" were deleted by the Price Control Extension Act of 1946.

**Matter between double asterisks was added by Section 108 (b) of the Stabilization Act of 1944.

†Matter between daggers was added by Section 108 (b) of the Stabilization Act of 1944, in lieu of the following language:

"* * * is not entitled to bring suit or action under this

tion, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.† * * *

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subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. The provisions of this subsection shall not take effect until after the expiration of six months from the date of enactment of this Act."

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